

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

In Re:) Chapter 11
)
MARITIME COMMUNICATIONS/) Case No. 11-13463DWH
LAND MOBILE, LLC)
Debtor)
)

Deposition of John Reardon
Washington, D.C.
Saturday, November 3, 2012
9:00 a.m.

Job No. 225137
Pages: 1-251
Reported by: Bonnie Russo

1 Deposition of John Reardon held at:
2
3
4
5
6 The Westin Georgetown
7 2350 M Street, N.W.
8 Washington, D.C.
9
10
11

12 Pursuant to agreement, before Bonnie
13 Russo, Court Reporter and Notary Public in and
14 for the District of Columbia.
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF THE DEBTOR:

CRAIG M. GENO, ESQUIRE
LAW OFFICES OF CRAIG M. GENO, PLLC
587 Highland Colony Parkway
Ridgeland, Mississippi 39157
Telephone: (601) 427-0048

ON BEHALF OF WARREN HAVENS, SKYBRIDGE SPECTRUM
FOUNDATION, VERDE SYSTEMS, LLC, ENVIRONMENTAL,
LLC, INTELLIGENT TRANSPORTATION & MONITORING,
LLC, and TELESORUS HOLDINGS GB, LLC:

DANNY E. RUHL, ESQUIRE
WILLIAM H. LEECH, ESQUIRE
COPELAND COOK TAYLOR & BUSH
600 Concourse, Suite 100
1076 Highland Colony Parkway
Ridgeland, Mississippi 39157
Telephone: (601) 856-7200

ON BEHALF OF THE WITNESS:

ROBERT J. KELLER, ESQUIRE
LAW OFFICES OF ROBERT J. KELLER, P.C.
P.O. Box 33428-Farragut Station
Washington, D.C. 20033
Telephone: (202) 223-2100

ALSO PRESENT BY PHONE:

FOR LENDORS:

JAN HAYDEN, ESQUIRE
BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ
201 St. Charles Avenue, Suite 3600
New Orleans, Louisiana 70170
Telephone: (504) 566-8645

FOR COMMITTEE:

MARC P. SOLOMON, ESQUIRE
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Telephone: (205) 458-5281

George Laub, Council Tree
Jonathan Glass, Council Tree
Warren Havens

C O N T E N T S

EXAMINATION OF JOHN REARDON	PAGE
BY MR. RUHL	6

E X H I B I T S

1	Notice of 30(b)(6)	9
	Deposition of Debtor	
2	Notice of Deposition	19
3	Letter dated 8-31-12	19
4	E-Mail dated 1-13-11	220

(Exhibits included with transcript.)

P R O C E E D I N G S

JOHN REARDON,
was called for examination by counsel and,
after having been duly sworn by the Notary, was
examined and testified as follows:

EXAMINATION BY COUNSEL FOR SKYTEL

BY MR. RUHL:

Q. Mr. Reardon, my name is Danny Ruhl
and I and Mr. Bill Leech here represent Warren
Havens, Skybridge Spectrum Foundation, Verde
Systems, LLC, Environmental, LLC, Intelligent
Transportation and Monitoring, LLC, and
Telesaurus Holdings GB, LLC, who -- that person
or those entities have been collectively
referred to in this bankruptcy case for a while
as SkyTel, and that's how I'm going to refer to
them today. Okay?

We're here to take deposition
pursuant to a notice of 30(b)(6) deposition of
debtor filed in the bankruptcy case of Maritime
Communications/Land Mobile, LLC, Case No.
11-13463 in the United States Bankruptcy Court
for the Northern District of Mississippi. The
notice is filed in the bankruptcy case as
Docket No. 748.

I hand you a copy of the notice and
ask you to look over that and tell me if you
have seen it and are familiar with it.

A. Yes, I have seen this one.

Q. Okay. The notice requests the
debtor to designate a representative to testify
on behalf of the debtor in connection with
certain matters set forth in Exhibit A to the
notice. It's on Page 4 of the notice.

I just want to be sure that when you
said you were familiar with the notice that it
included Exhibit A on Page 4?

A. Yes. This is the one for the
Rappahannock Electric motion to settle?

Q. No. Actually, this notice is for
the first amended plan of reorganization and
the debtor's motion to sell assets to
Rappahannock, and Exhibit A to the notice
encompasses matters related to both of those
things, the plan or Matters 1 through 6 in
general and then the rest are in general
related to the motion to sell to Rappahannock.

Please look over these matters and
let me know -- confirm that you are familiar
with them.

A. Yes, I am familiar with them.

Q. As I was saying before, the notice
asks a debtor to designate a representative to
testify in connection with the matters on
Exhibit A to the notice.

Are you the debtor's designated
representative for that purpose?

A. Yes, I am.

Q. The notice also has an Exhibit B,
which are documents which the debtor was
requested to produce for inspection and copying
at the deposition today.

Are you familiar with Exhibit B and
did you bring with you any documents today that
are responsive to that document request?

A. I am familiar with Exhibit B, and as
I understand it, the documents which the debtor
plans to introduce at the planned confirmation
are all documents which are already a matter of
the public record.

Q. So you did not bring any with you
today?

A. I don't have any additional
documents with me today.

Q. What about Item 2, documents the

1 Q. The lease of MCLM to NRTC, do you
2 recall the approximate date of that?

3 A. I don't. It predates the direct
4 lease so it would be before 2009, I believe,
5 but I can't remember the exact date of it.

6 Q. Okay.

7 A. It might be available on the FCC's
8 website also, because I believe that sublease
9 would have been filed with the FCC.

10 Q. Okay. So the things you've
11 identified so far, the transcripts you
12 discussed and the leases and/or subleases
13 involving NRTC and/or Rappahannock that you
14 discussed, do those encompass the universe of
15 documents that are responsive to the document
16 requests in the deposition notice that is
17 Docket No. 750?

18 A. I believe so, yes. I would include,
19 you know, all of the earlier purchase
20 agreements which have been reviewed and
21 approved by the court. Those obviously contain
22 the terms of the transactions, purchase price,
23 things like that.

24 Q. The document requests asks for
25 expert files of the deponents.

1 Are there any expert files of the
2 deponents that encompass any documents other
3 than what you have already identified?

4 A. I believe that we produced all the
5 files on a CD already for the FCC purchases, so
6 to the extent that those are already in
7 possession of the parties, I don't believe
8 there are any other documents which could
9 relate to these transactions or valuations.

10 Q. I don't have any CD that has been
11 produced to the FCC and neither does my client.

12 A. Okay.

13 Q. So can I get a copy of that?

14 A. Well, I believe your client may have
15 that CD. The CD in the FCC matter that lists
16 all of the different information like the
17 purchase agreements and all of that
18 information.

19 Q. He didn't get it.

20 A. Okay.

21 Q. When can I get a copy of that since
22 it's part of this document request?

23 A. Well, to the extent that it's
24 relevant to any of these transactions, when Mr.
25 Keller comes back in the room, we can ask him

1 since he has a copy of that.

2 Q. The document request also asks for
3 any expert report or reports which have been
4 prepared by the deponents. Do any reports
5 exist?

6 A. I have not prepared any reports
7 beyond the transcripts of my testimony.

8 Q. Do you intend to prepare any written
9 expert report or reports between now and the
10 hearings?

11 A. I do not.

12 MR. RUHL: I'm going to mark as
13 Exhibit 2 to the deposition the notice of
14 deposition which is Docket No. 750 in the
15 bankruptcy case.

16 (Deposition Exhibit No. 2 was marked
17 for identification.)

18 MR. RUHL: I'm going to mark as
19 Exhibit 3 to the deposition a document dated
20 August 31st, 2012 which is -- which was
21 submitted by SkyTel to Derek Meek on behalf of
22 the committee, which I'm going to refer to as
23 the SkyTel proposal.

24 (Deposition Exhibit No. 3 was marked
25 for identification.)

1 BY MR. RUHL:

2 Q. I'm going to hand you a copy of it,
3 Mr. Reardon, and ask you to take a minute to
4 look over it and let me know if you have seen
5 that before.

6 A. Did you have a question about this?

7 Q. My first question I believe was --
8 well, whatever my first question was. My
9 question now will be: Have you seen that
10 before?

11 A. Yes, I recall seeing this before.

12 MR. GENO: Let me interpose an
13 objection here about any further questions
14 about this.

15 I object to the form of the question
16 for two reasons. One, the court has already
17 heard and considered this and has rejected it
18 out of hand. Two, questions about this or
19 references to this are prohibited by the
20 bankruptcy code because it's soliciting support
21 for a plan or proposal that has not been the
22 subject of an approved disclosure statement.

23 So for those reasons, I'm going to
24 lodge my objection.

25 MR. RUHL: Okay.

BY MR. RUHL:

Q. When do you recall seeing that for the first time, Mr. Reardon?

A. Let's see. I was checking the records on PACER online of what had been filed in the matter and I came across this. It was probably sometime in September.

Q. Did the debtor consider what -- I will call this the SkyTel proposal, did the debtor consider the SkyTel proposal in formulating the first amended plan of reorganization that's Docket No. 669?

MR. GENO: Same objection.

THE WITNESS: Well, in my position working for the debtor, I can answer that when I saw this, I thought it constituted what we call greenmail, which is basically against the FCC's rules. Greenmail is where you lodge a protest of a licensed assignment and in exchange for consideration, you withdraw your protest, and that's against the law, so I viewed this as a -- basically as a greenmail attempt.

It also struck me as something which was impossible to achieve and what I mean by

that is the proponent in this case, Havens, said that --

BY MR. RUHL:

Q. I'm going to go ahead and just note for the record -- I don't mean to interrupt you, but let me note for the record that I assume when you say Havens, you are referring to all the entities plus Mr. Havens that I defined earlier as SkyTel?

A. That's correct.

Q. Okay. Go ahead.

A. Havens basically proposes in this plan or this -- if you want to call it a plan, in this document to have the FCC essentially cancel its inquiry or investigation in front of the administrative law judge and the genie is already out of the bottle. It's not possible for Mr. Havens unilaterally, in my view or in the debtor's view, to drop his protests and thereby have the judge, Judge Sippel, simply close the inquiry. So, you know, this plan assumes something which is not possible for Mr. Havens unilaterally to achieve or the Havens' entities unilaterally to achieve.

Q. Your testimony that you just gave,

is that the extent of the reasons why the debtor rejected this proposal?

A. Oh, no. First of all, this does not seem to be a firm, you know, what I would call a serious proposal. It is made to Derek Meek, the committee of unsecured creditors. I wasn't even copied on it. I don't see who else was copied on it. I don't know.

But this proposal, from an economic standpoint, would essentially turn all the licenses over to Mr. Havens. He would assign to himself a value of 2 and a half million dollars for his spurious one remaining antitrust claim in New Jersey, and then he would pay off whomever he deems is a valid creditor, so it really hands him the licenses without giving any of the secured parties or the unsecured parties much assurance that they would get paid. So I don't take this as a firm proposal by any means.

Q. Other than what you've already said, are there any other reasons why the debtor rejected the proposal -- I'm calling it a proposal. Whatever it is, that's what I'm calling it. Any other reasons why the debtor

rejected it?

MR. GENO: Object to the form of the question. It calls for a legal conclusion.

The debtor has already stated additional legal grounds on the record as to why this expression of interest or plan or whatever it is should not be considered and the court has approved those.

BY MR. RUHL:

Q. Mr. Reardon, other than what you've said, are there any other reasons why the debtor rejected this proposal?

MR. GENO: Same objection. Asked and answered.

MR. RUHL: Well, I don't think he answered, but go ahead.

THE WITNESS: I remember being in Judge Houston's courtroom. I believe Mr. Havens was there as well, and one of the parties asked Mr. Havens to produce a checkbook, and I heard a lot of hemming and hawing by Mr. Havens, but certainly no checkbook was produced then or thereafter, and so, you know, he has had an opportunity to come with cash. This is not a cash type of offer to

1 the secured creditors or the unsecureds or
2 really anybody, and so from an economic
3 standpoint, this didn't seem to be very
4 attractive at all.

5 BY MR. RUHL:

6 Q. Any other reasons why the debtor
7 rejected the SkyTel proposal?

8 MR. GENO: Same objection.

9 THE WITNESS: Serious concerns about
10 whether Mr. Havens himself qualifies as a
11 licensee. He has created what I would consider
12 to be a bogus nonprofit group called Skybridge,
13 which really has no charitable purpose and only
14 exists to support his for-profit entities.

15 In addition, Skybridge has received
16 by partial assignment many licenses in order to
17 try to avoid construction deadlines, so I
18 believe that sooner or later, the chickens are
19 going to come home to roost and that Skybridge
20 will be found by the IRS and hopefully the FCC
21 not to be a valid nonprofit group which then
22 would result in Mr. Havens lack of character
23 and lack of suitability to be a licensee, so I
24 would be very reluctant to hitch our wagon as
25 the debtor to someone who we believe will be

1 ultimately found to lack character to hold FCC
2 licenses.

3 BY MR. RUHL:

4 Q. Any other reasons why the debtor
5 rejected the proposal?

6 A. How much time do we have? Mr.
7 Havens has --

8 Q. As much time as it requires for you
9 to answer my question.

10 A. Yes. Mr. Havens has never built or
11 operated anything. He has in his exhibit a lot
12 of highfalutin atlas and halo and other types
13 of business plans that he refers to.

14 On Page 10, there are various links
15 to various -- University of California
16 Berkeley, or maybe it's Page 12, proposals of
17 people like Dr. Inde Tripathi and others, but
18 in reality, he has never built anything. He's
19 just simply a spectrum warehouse. He holds
20 spectrum and tries to sell it while using
21 litigation techniques to keep others out.

22 So to the extent that any
23 transaction is going to be, quote-unquote,
24 owner-financed, meaning the debtor will hand
25 the licenses over to someone like Council Tree

1 or Choctaw, who then would need to sell
2 licenses to pay off the debts, Mr. Havens does
3 not have a successful record of building
4 businesses in the debtor's opinion.

5 Q. Anything else?

6 MR. GENO: Same objection.

7 BY MR. RUHL:

8 Q. Are you finished answering my
9 question?

10 MR. GENO: Same objection.

11 THE WITNESS: Mr. Havens claims that
12 his claim in New Jersey is worth \$2.5 million
13 is one remaining count which I don't believe
14 will survive very long. It's for an antitrust
15 conspiracy. It's a pretty silly claim.

16 The fact that he, you know, started
17 off saying it is worth a hundred million
18 dollars and now he is willing to bring it down
19 to 2.5 million and I think for voting purposes,
20 ratcheted it down to a hundred thousand,
21 clearly, I think this proposal or letter from
22 him to Mr. Meek far overstates in Footnote 4
23 the value of his very spurious claim, giving
24 him much more value than it would be worth.

25 BY MR. RUHL:

1 Q. Noting Mr. Geno's continuing
2 objection, anything else?

3 A. Let's see. I think another reason
4 to reject this or -- I don't even know if you
5 would call this a proposal, this letter, is the
6 fact that time is of the essence and we have,
7 as a company or a debtor, we have two valid --
8 what I would view are valid and competing
9 proposals from Council Tree and Choctaw
10 respectively, and so to the extent that, you
11 know, time is money, the debtor views this as a
12 distraction -- this August 31st letter as a
13 distraction and simply an effort to delay the
14 resolution of the bankruptcy in Chapter 11.

15 Q. Anything else?

16 A. That is it.

17 MR. GENO: Same objection.

18 BY MR. RUHL:

19 Q. Let me ask you some follow-up
20 questions related to the testimony you just
21 gave.

22 Are you aware that SkyTel has built
23 public coast licenses in western states?

24 A. I'm not aware of that.

25 Q. Let me ask you this, Mr. Reardon:

1 Is it fair to say that there is no manner in
2 which SkyTel could change its proposal in
3 negotiations with the debtor or creditors or
4 otherwise, in a way that would satisfy the
5 debtor and have the debtor consider it?

6 MR. GENO: Same objection.

7 If you want to make a specific
8 proposal, Danny, we will think about it, but a
9 general --

10 MR. RUHL: I would like him to
11 answer the question.

12 MR. GENO: A general shooting in the
13 dark question like that, I don't think he's
14 capable of answering.

15 MR. RUHL: I'd like him to answer
16 the question.

17 THE WITNESS: Seems pretty
18 hypothetical to me, is there any way that a
19 proposal could be changed to satisfy the
20 debtors is pretty hypothetical. As a matter of
21 public record, that the secured debt and the
22 unsecured debt adds up to around -- I don't
23 know, 18 million of secured debt and maybe
24 another 9 or 10 million of unsecured debt,
25 include the FCC claims and maybe somewhere

1 around 30 million, so, you know, to speculate
2 as to what those different parties would take
3 in terms of a plan, I think it would be easy
4 for me to say, well, if Havens was to produce
5 \$30 million in cash, that certainly would be a
6 favorable amendment to his plan and one which
7 people might be really interested in, so a
8 hypothetical answer, sure, there are probably
9 ways that this plan could be changed and cash
10 could be put on the table that might be of
11 interest to people.

12 BY MR. RUHL:

13 Q. Anything short of SkyTel putting \$30
14 million or some other substantial amount of
15 cash on the table?

16 MR. GENO: Same objection.

17 I'm going to instruct the witness
18 not to answer any more questions about this.
19 You are getting into prohibitions against
20 solicitation for a plan that is not accompanied
21 by an approved disclosure statement, so we're
22 going to cut this off now.

23 MR. RUHL: There is no grounds for
24 you to instruct the witness not to answer
25 unless it's privileged. You have no grounds to

1 instruct him not to answer here, Greg.

2 MR. GENO: You have asked the
3 question. It's irrelevant. I'm instructing
4 him not to answer any further questions.

5 MR. RUHL: You can't do that.

6 MR. LEECH: You can't object on
7 whether it's being irrelevant and instruct him
8 not to answer because you think it's
9 irrelevant.

10 MR. GENO: I've instructed the
11 witness not to answer.

12 Let's move on.

13 MR. LEECH: Well, if we have to come
14 back, the debtor's going to have to pay.

15 MR. GENO: No, the debtor's not
16 going to pay. If you want to call the judge
17 for him to take it up.

18 This is completely irrelevant and,
19 you know, you are bordering on getting some
20 sanctions levied about solicitation of a plan
21 that has not been approved by an -- sponsored
22 by an approved disclosure statement. The judge
23 has already said he is not going to consider it
24 because it's late.

25 We are wasting a lot of time here

1 and the witness has answered the question to
2 the extent that he can.

3 MR. RUHL: I have about two minutes
4 more worth of questions, and I suggest you let
5 me ask them because there is no basis for
6 instructing this witness not to answer these
7 questions. I don't want to come back, you
8 don't want to come back. Let me finish my
9 questions. We're not going to be wasting a lot
10 of time. I'm right here at the end, so let's
11 get around that.

12 MR. GENO: We've wasted 20 minutes
13 so far, and we're not going to go past 4:00
14 today. It's your deposition, but we're not
15 going past 4:00 today.

16 If you want to waste some more time
17 and the witness feels comfortable answering the
18 question, fire away.

19 MR. RUHL: Well, we might not go
20 past 4:00 for the 30(b)(6) of the debtor, but
21 we have two experts you've produced here today,
22 so we can get into that later if we have to.

23 MR. GENO: You are only entitled to
24 seven hours of our time today and that's all
25 we've got, 9:00 a.m., 4:00 p.m..

1 MR. RUHL: Today.
 2 I'm entitled to more than seven
 3 hours for the experts that you have now
 4 designated.
 5 MR. GENO: No. Today, you are
 6 entitled, 9:00 a.m. --
 7 MR. RUHL: Not today. I'm saying
 8 before the hearing.
 9 MR. GENO: We will see.
 10 MR. RUHL: All right.
 11 BY MR. RUHL:
 12 Q. The question I believe I asked is
 13 short of the SkyTel putting some huge amount of
 14 cash on the table, is there any way that the --
 15 any way that this proposal could be changed in
 16 a manner that the debtor would consider working
 17 with SkyTel on it?
 18 A. As I mentioned earlier, I wouldn't
 19 want to speculate an answer or a hypothetical.
 20 Q. I'm going to ask you to, and I am
 21 entitled to ask you that, so speculate.
 22 MR. GENO: You are not entitled to
 23 ask him to speculate.
 24 BY MR. RUHL:
 25 Q. What changes would be acceptable to

1 the debtor?
 2 A. I'm not sure.
 3 Q. Okay. Are you aware that your
 4 counsel in a hearing in front of the court
 5 said, quote, the debtor has no interest in
 6 being partners with Mr. Havens, end quote?
 7 A. Am I aware of that?
 8 Q. Yes.
 9 A. I don't recall that.
 10 Q. You were not at the hearing. I'm
 11 asking if you're aware that that was said.
 12 A. I was not at the hearing.
 13 Q. It was a telephonic hearing.
 14 A. I was not aware of that.
 15 Q. As the debtor representative, do you
 16 agree with that statement that the debtor has
 17 no interest in being partners with Mr. Havens?
 18 A. Again, I don't know what the time
 19 frame or context of that statement was.
 20 Q. It was a statement discussing the
 21 SkyTel proposal we are talking about.
 22 A. Well, first of all, I wouldn't call
 23 this a proposal. Second of all, I wouldn't
 24 want to answer that question as it relates to
 25 just one sentence out of a conversation in

1 which I was not involved.
 2 Q. Do you agree that the debtor has no
 3 interest in being partners with Mr. Havens in
 4 connection with any SkyTel proposal?
 5 A. I haven't seen any SkyTel proposal
 6 other than this, and as I mentioned at length,
 7 the debtor is not interested in this particular
 8 letter, to call it that, for many reasons which
 9 I enumerated earlier.
 10 Q. And we can move past all this if you
 11 will answer my question: Do you agree that the
 12 debtor has no interest in being partners with
 13 SkyTel at all?
 14 MR. GENO: Objection. It has been
 15 asked and answered three times I've counted.
 16 MR. RUHL: It has not been answered
 17 one time. It's been asked three times, it just
 18 hasn't been answered.
 19 MR. GENO: He has answered it the
 20 best way he can answer it. It has been asked
 21 and answered.
 22 BY MR. RUHL:
 23 Q. Do you agree with that or not? Yes
 24 or no?
 25 A. Let me put it to you this way.

1 Since we are in Washington, I won't answer yes
 2 or no. Let me give you the best answer I can.
 3 Q. Okay. I would appreciate that.
 4 A. We sit here in early November, we
 5 have two -- what I would call valid proposals
 6 for confirmation in two weeks. As I testified
 7 earlier, time is money.
 8 The SkyTel entities, Mr. Havens has
 9 had more than enough opportunity in the
 10 debtor's view to put a serious plan together
 11 and to be a third bidder, if you will, in
 12 addition to Choctaw and Council Tree, so to the
 13 extent that that would have happened in the
 14 past, it did not happen. Would the debtor have
 15 been interested at some point in receiving that
 16 type of solicitation? I believe that the
 17 answer is yes. The debtor would have been at
 18 some point in time, but that is all
 19 hypothetical, because here we are and we don't
 20 have that, so I'm not sure if I answered your
 21 question directly, but I did the best I could.
 22 Q. The plan related -- the question
 23 related to the plan that has been proposed by
 24 the debtor. Are CTI or Choctaw proposing to
 25 pay in their -- in the -- I will call them the

1 Choctaw proposal and the CTI proposal. I'm
2 referring to the documents attached to the
3 disclosure statement.

4 A. Yes.

5 Q. Do either the Choctaw proposal or
6 the CTI proposal propose to pay \$30 million in
7 cash or anywhere close to that if the FCC
8 approval is obtained for the licenses that
9 belong to the debtor to be transferred to
10 either of those entities?

11 A. I believe the plans are
12 self-explanatory. They speak for themselves.
13 I believe that both plans contemplate the
14 payment of all of the secured and unsecured
15 debt, which I believe total around 30 million.
16 I think the CTI plan has a cap of around 30 or
17 \$32 million on it.

18 Q. That cash comes after licenses are
19 marketed and sold, right?

20 A. Well, the FCC has to approve any
21 transfer or assignment of licenses, so that is
22 a --

23 Q. Subject to FCC approval, that
24 transfer would come after the licenses are
25 transferred to one of those entities and then

1 sold by them, correct?

2 A. My understanding of the plan is that
3 they would receive the -- either CTI or Choctaw
4 would receive the proceeds from the sale or
5 lease, I guess, of licenses and use those
6 proceeds to pay off the debts.

7 Q. Okay. Neither CTI nor Choctaw
8 coming to the table with cash sufficient to pay
9 off all the creditors absent the sale or lease
10 of licenses and approval by the FCC; is that
11 right?

12 A. As I testified earlier, I believe
13 that both proposals contemplate some type of
14 what we might call owner financing.

15 Q. Tell me what that means.

16 A. Yes. Essentially, as the plans both
17 state, the two entities would sell or lease the
18 spectrum in order to pay off the owner, in this
19 case, the debtor debts, so both have a sort of
20 similar mechanism where they would sell or
21 lease spectrum, use those proceeds to pay off
22 the debts.

23 Q. Last question, and I'm going to move
24 on off of this: Are you aware that under the
25 SkyTel proposal that it involves SkyTel giving

1 up challenges, multiple challenges that are
2 pending with the FCC and in the District Court
3 of New Jersey that might -- if they are given
4 up, expedite this process of paying the
5 creditors?

6 MR. GENO: Object to the form of the
7 question.

8 THE WITNESS: As I testified
9 earlier, I believe that those proposals
10 constitute what we call greenmail, which is
11 kind of a nice way of saying it's blackmail,
12 but you're asking for money, so I believe that
13 those proposals are in effect against the FCC's
14 rules and regulations and so are impossible to
15 achieve, and perhaps illegal.

16 BY MR. RUHL:

17 Q. Considering you think the SkyTel
18 proposal is illegal, perhaps illegal, and that
19 you think that it's only a matter of time
20 before -- I think you said, the chickens come
21 home to roost and SkyTel might be facing
22 character issues at the FCC, considering those
23 things, is it fair to say that there is no
24 proposal SkyTel could put forth that the debtor
25 would consider accepting?

1 MR. GENO: Object to the form of the
2 question.

3 THE WITNESS: I believe I already
4 answered that question as well, that certainly
5 -- hypothetical, there could be situations in
6 which, you know, in the past if Havens or the
7 SkyTel group or whomever had put a serious
8 proposal together, perhaps that would have
9 been, you know, considered closely, but here we
10 are, November 1st, and we don't have that and
11 time is of the essence. November.

12 BY MR. RUHL:

13 Q. Does the debtor feel that -- is the
14 debtor's plan as proposed and if it's
15 confirmed, is it the debtor's position that
16 that will somehow allow the licenses to be
17 transferred to Choctaw or CTI despite the other
18 challenges that are pending in the FCC by
19 SkyTel that involve the licenses? Let me ask a
20 better question.

21 The debtor's plan seems to me to
22 rely on Second Thursday relief being granted,
23 such that in the debtor's position, the
24 licenses could be transferred to Choctaw or
25 CTI. Would you agree with that being an

1 generally familiar with those matters, but Curt
2 Brown is the company's FCC counsel is more
3 intimately familiar and Bob Keller, of course.

4 Q. What about -- are you aware that in
5 the -- if SkyTel were to prevail on its
6 antitrust claim in New Jersey, that one of the
7 potentially applicable remedies available to
8 the District Court under the Communication Act,
9 Section 313, is revocation of the maritime
10 licenses?

11 A. I have heard that that section of
12 the act exists. I'm not sure if that has ever
13 been applied before.

14 Q. Is it the debtor's position today
15 that going forward and getting Second Thursday
16 relief and/or obtaining the Footnote 7
17 exception to the hearing designation order,
18 could clear all of these things we just talked
19 about, these challenges to the licenses, could
20 clear them out of the way so that the licenses
21 could be transferred to Choctaw or CTI?

22 A. I believe that the FCC decision on
23 whether it is Second Thursday and/or the
24 Footnote 7 may resolve some or all of the
25 FCC-related matters. How that would interplay

1 with the action in front of the New Jersey
2 court, the one antitrust claim, I'm not clear
3 because I believe that the -- that court has
4 its own jurisdiction, of course, and the FCC
5 controls licenses. That court is looking into
6 the antitrust claims.

7 So to answer the question, I believe
8 that any Second Thursday grant or any Footnote
9 7 grant would relate to FCC matters within its
10 jurisdiction, but probably would not relate
11 directly to the New Jersey court jurisdiction.

12 Q. Did the debtor receive any feedback
13 from the creditors in connection with the
14 SkyTel proposal?

15 A. I think I've answered --

16 Q. I'm asking if you got any feedback
17 or had any discussions with any of the
18 creditors about it?

19 A. Oh, well, let's see. Yes.

20 Q. Can you tell me about those?

21 A. Well, sure. Without violating any
22 NDAs or anything, because I believe there is
23 one in place with both Choctaw and with Council
24 Tree, I received some feedback from the Choctaw
25 folks that, you know, this didn't seem to be a

1 firm -- what I would call a firm plan.

2 I also am an unsecured creditor
3 myself, so I gave myself some feedback saying,
4 this didn't look like this was something that
5 was going to be feasible, to be polite. I
6 believe I spoke with Mr. Meek briefly about
7 this in September and he expressed a similar
8 view. I'm trying to think if we talked to
9 anybody else about this.

10 Q. Did Mr. Meek give any specific
11 reasons?

12 A. Not that I recall.

13 Q. Anything else you haven't told me
14 about that question?

15 A. I think the question was did any
16 creditors have any opinions on this?

17 Q. Right.

18 A. Was that the question?

19 I believe I spoke with Tim Smith who
20 is an unsecured creditor and he had views
21 similar to mine. I'm trying to think if there
22 is anybody else.

23 As I said, I wasn't served directly
24 with a copy of this and so I sort of found out
25 about it through my own -- my own looking

1 through the filings, so that's probably about
2 it. That's all I can recall right now.

3 Q. Does the debtor in its plan, which
4 seems to rely on either Second Thursday or
5 relief from the Footnote 7 exception, which is
6 what I'll call it.

7 You understand what I mean when I
8 say that, right, the Footnote 7 exception?

9 A. Yes, sir.

10 Q. Does the debtor have any reason to
11 believe that if its plan goes forward and
12 Second Thursday relief is obtained and/or
13 Footnote 7 exception, does it have any reason
14 to believe that SkyTel wouldn't be allowed to
15 appeal those decisions?

16 A. You mean to appeal?

17 Q. To the FCC and/or to the District
18 Court?

19 A. Just when you say the "decision," do
20 you mean the Second Thursday decision and/or
21 Footnote 7 decision?

22 Q. That's right.

23 A. Well, sure. I believe that, you
24 know, both or either one of those decisions
25 would be decisions probably of the full

1 commission, which I believe could be appealed
2 to the court in D.C..

3 Q. All right, thanks, Mr. Reardon. Can
4 I get that back? I'm done asking you about
5 that document, which I'm sure Mr. Geno will be
6 thrilled to know.

7 As I appreciate it and as I think
8 we've discussed at least in part, the plan
9 seems to provide for -- or contemplate getting
10 Second Thursday relief and/or Footnote 7
11 exception relief, and subject to getting that
12 and/or any other FCC approvals that might be
13 required, transferring the licenses to either
14 Choctaw or CTI so that they can then close the
15 approved APAs and market and sell the rest of
16 the licenses in an effort to pay off creditors.
17 Is that an accurate kind of summary of the
18 basic components of the plan?

19 A. My understanding of the plan is yes,
20 that either Choctaw and/or Council Tree would
21 attempt to receive FCC approval. As you've
22 mentioned, close the pending transactions,
23 which have been approved by the bankruptcy
24 court and sell and/or lease sufficient licenses
25 to pay off the debt or perhaps, you know,

1 deploy the spectrum in other ways, you know,
2 for example, bring in enough money through
3 operations, partnerships, that type of thing,
4 to pay off the debt.

5 Q. And what would happen to any
6 licenses left over after the -- that haven't
7 been sold, leased or otherwise disposed of
8 after the debt has been paid off?

9 A. What would happen to any licenses
10 that had not -- that remained?

11 Q. Yes.

12 A. Well, you know, I believe that both
13 plans contemplate ownership of the license. I
14 think the Choctaw plan contemplates ownership
15 in a holdings entity, and Council Tree I
16 believe would form a company called Council
17 Tree Maritime maybe, so I believe that both of
18 those companies would be -- under their
19 respective plans, would hold the licenses so to
20 the extent that, you know, again, this is
21 hypothetical, but to the extent that there may
22 be additional licenses after the debts are paid
23 and after all, you know, the debts would
24 include, of course, cost of operations, taxes,
25 you know, so it would be more than I think just

1 the debt. I think both plans contemplate
2 payment of taxes. There would be ad valorem
3 taxes, for example, so after all of that is
4 paid, to the extent that there may be extra
5 licenses or licenses left over, then I believe
6 both plans contemplate that the entity that
7 holds the license, Choctaw Holdings or CTI
8 Maritime would then remain the holder of those
9 licenses.

10 Q. If you can, explain to me why
11 Choctaw or CTI -- what is the benefit of having
12 either of them involved? Why wouldn't it be
13 better, more feasible, whatever, for the debtor
14 to just go seek Second Thursday relief and/or
15 any other FCC approvals they need to move
16 forward with marketing and selling the
17 licenses, closing the APAs and paying off the
18 debt?

19 A. Well, the debtor doesn't have any
20 money. Prior to filing Chapter 11, I and the
21 other employees, we were not paid for about
22 three months so we couldn't even make our
23 payroll. I think the schedules that we filed
24 show that maybe in January, we had about \$9,000
25 in the bank account so the debtor -- we don't

1 have any money, so to do it alone would be -- I
2 would say impossible or very, very difficult.

3 So, therefore, it's necessary to
4 have someone to come in and be willing to pay
5 debtor and possession financing, pay the costs
6 of operating the business, site rent,
7 utilities, things like that, marketing costs,
8 and actually then to go and, you know, build a
9 business plan around that, whether it's selling
10 enough licenses to pay off debt or leasing
11 licenses or entering into partnerships or
12 whatever it is that Choctaw and Council Tree
13 would do.

14 Q. Has Choctaw or Council Tree
15 committed to financing, funding, however you
16 want to call it, financing or funding the
17 process of marketing and selling these licenses
18 or can they walk away at any time?

19 A. Well, my understanding of the plans
20 is that -- I believe Council Tree would fund I
21 believe about six months' worth of what we
22 might call monthly expenses, and I believe that
23 -- and I know that Choctaw also has what they
24 call monthly accrual of -- I think accrual was
25 -- is my Pittsburgh accent, a monthly accrual

1 doing the same thing.

2 So I got a call from Jack Harvey at
3 NRTC who said basically, the folks at
4 Rappahannock have a sublease with us for some
5 channels, a lease with you directly for some
6 other channels, and they're interested in doing
7 what Shenandoah Valley just did, putting that
8 into a purchase agreement. I said, okay, I
9 will be happy to contact them.

10 I contacted Gary Schwartz, who I've
11 known at Rappahannock, who is sort of the
12 person in charge of these types of things for
13 Rappahannock, and negotiated a transaction very
14 similar to what we did with Shenandoah Valley
15 Electric.

16 Q. Was NRTC -- is that the extent of
17 NRTC's involvement with that transaction or did
18 they do anything else, such as -- but not
19 limited to negotiating the price?

20 A. No, they did not negotiate the
21 price, nothing like that. It was more as a --
22 I don't know if I'd call it a facilitator.
23 Somebody to introduce the idea of Rappahannock
24 buying from us the channels. And then
25 following up after we signed the purchase

1 agreement, it took a number of weeks, and it's
2 really my fault, to get the transaction, you
3 know, the motion before the court, the
4 bankruptcy proceeding, so I was regularly
5 getting e-mails from Rappahannock's attorney
6 and from Jack Harvey at NRTC saying, hey, you
7 know, you have got a November 14th confirmation
8 date for your plan but you haven't put this
9 motion for sale in front of the court.

10 So there was some concern by
11 Rappahannock which kind of filtered then up to
12 Jack Harvey, who I have known for a long time,
13 and so that was sort of his involvement was to
14 help to make sure that we were filing what we
15 needed to file at the FCC, at the bankruptcy
16 court, et cetera, to keep the transaction on
17 track, or get it on track, whichever.

18 Q. The plan contemplates Rappahannock's
19 lease and sublease being assumed, though,
20 right, because confirmation -- the confirmation
21 hearing occurs before the asset purchase
22 agreement is going to be heard by the
23 bankruptcy court?

24 A. That is a good question. Yeah.
25 That is my understanding and certainly what I

1 have represented to Rappahannock is that our
2 hope or plan is to have the leases come into
3 the plan so that there wouldn't be a gap in
4 time basically, because they built these
5 systems, they are using this spectrum already
6 under this lease, so, you know, we want to make
7 sure that that continues forward.

8 MR. RUHL: If it's all right with
9 you guys, I need to take a break.

10 I'm going to put you guys on mute.

11 (A short recess was taken.)

12 BY MR. RUHL:

13 Q. Mr. Reardon, we discussed a little
14 bit about leases earlier.

15 Can you tell me what site -- site
16 leases are in effect that have not been
17 terminated?

18 A. Do you mean what leases involve
19 site-based licenses?

20 Q. Yeah, I think so.

21 A. Yeah, to the best of my recollection
22 -- let's see. There is the Evergreen lease
23 that involves site-based license on the West
24 Coast. There is a lease with Puget Sound
25 Energy, I believe, for about five sites on the

1 Pacific North and the Pacific Northwest. There
2 is the CCN agreement which we still believe is
3 in place, we never cancelled it, and that is
4 for site-based licenses in Orlando and in the
5 Clearwater, Florida area. There is a lease
6 with Pinnacle Wireless in New Jersey which
7 involved site-based licenses in the middle and
8 northern part of New Jersey, New York area,
9 impacts Manhattan, and I think their contour
10 goes to -- what is just north of New Jersey? I
11 guess Southern New York area. There is the
12 Duquesne Light lease in place which is a
13 site-based license.

14 I'm trying to think of what else I'm
15 missing. That may be all of them that involve
16 site-based licenses.

17 Q. Okay. Let me ask you something:
18 Are you -- is it your understanding that the
19 SkyTel proposal explicitly states that it would
20 involve a three-party settlement between
21 Maritime, SkyTel and the FCC, of all matters
22 relating to Maritime FCC licenses?

23 MR. GENO: Object to the form of the
24 question.

25 THE WITNESS: I don't really have an

1 understanding about a SkyTel proposal because
2 as I testified earlier, it's -- sorry, I don't
3 think I have it in front of me anymore.

4 BY MR. RUHL:

5 Q. Here it is.

6 A. Thank you.

7 It really wasn't much of a proposal.
8 It is more of a letter to the unsecured
9 creditors.

10 Q. Well, I am using the term
11 "proposal." Let's not get wrapped up in that.
12 I'm just talking about the document that's been
13 marked as Exhibit 3 to the deposition.

14 A. Okay. What was the question again?

15 Q. Can you confirm your understanding
16 that that proposal proposes a three-way
17 settlement or a three-party settlement between
18 Maritime, SkyTel and the FCC on all matters
19 related to Maritime FCC licenses?

20 MR. GENO: Same objection.

21 THE WITNESS: No. I think this
22 letter would involve a lot more than three
23 parties because I believe it would require the
24 secured creditors and the unsecured creditors
25 to basically agree to hand over the licenses to

1 Havens to recognize \$2.5 million of a claim
2 related to his New Jersey antitrust action, and
3 so I believe it would involve a lot more than
4 just the FCC.

5 As I testified earlier, I also
6 believe the proposals against the FCC rules
7 which involve what's called greenmail.

8 BY MR. RUHL:

9 Q. The proposal does involve, though,
10 doesn't it, the agreement of at least the
11 debtor SkyTel and the FCC? I'm referring
12 specifically to Items 1, 2, 3 and 4 on Pages 1
13 and 2.

14 A. Well, let's see. Item 1. Clear
15 licenses of adverse claims. SkyTel would
16 dismiss with prejudice all of its claims
17 against licenses in current FCC and court
18 proceedings and agree to make no additional
19 such claims. Clear FCC hearing claims against
20 licenses and terminate the hearing.

21 As I mentioned earlier, that would
22 involve more than just the FCC, because in
23 order to terminate the hearing, that is not
24 something that is within SkyTel's control.

25 Q. You are talking about Item 2, right?

1 A. Yes, sir. So it would involve an
2 administrative law judge. I'm not even sure if
3 that could be done.

4 Q. Does No. 2 say SkyTel would attempt
5 to obtain and would obtain -- under this
6 proposal, FCC settlement of the hearing against
7 the debtor to allow the proposal to proceed and
8 the FCC would have to agree to that?

9 A. I guess my -- to answer your
10 question about is the FCC involved, I'm not
11 sure if the FCC could be involved in that. In
12 other words, once it hands over to the
13 administrative law judge, the hearing and that
14 starts in order to effectively stop that. I
15 don't think that SkyTel -- I guess when I am
16 referring to the FCC, I'm thinking about the
17 Wireless Bureau or their commission, yeah, I
18 just don't know again if that would involve
19 more than the FCC to accomplish that.

20 Q. But No. 2 says the FCC would have to
21 agree. Is that what No. 2 says?

22 A. It says SkyTel would obtain FCC
23 settlement of the hearing. FCC would have to
24 agree. Yeah, I mean the language speaks for
25 itself.

1 Q. The debtor also has to agree.
2 That's what No. 2 says, right?

3 A. SkyTel would attempt to obtain or
4 would obtain FCC's -- against the debtor, and
5 it says the debtor would have to agree.

6 Q. All right. Thank you. Can I have
7 that back?

8 Can you tell me why -- what led to
9 the debtor's decision to file bankruptcy?

10 A. As I testified earlier, the debtor
11 didn't have any money in the bank. Had not
12 been able to pay its obligations, its
13 fundamental obligations, office rents,
14 employees' salaries, cell phone bills, that
15 sort of thing.

16 Q. You are saying that's the primary
17 reason why the debtor filed bankruptcy?

18 A. My understanding is that is the --
19 lack of cash is the main reason, yes.

20 Q. Did SkyTel -- I'm sorry.

21 Did MCLM also file bankruptcy for
22 the purposes of seeking Second Thursday relief?

23 A. I don't know.

24 Q. In your capacity as corporate
25 representative of the debtor here today, you

1 don't know if one of the reasons the debtor
2 filed bankruptcy was to propose a plan and
3 attempt to seek Second Thursday relief?

4 A. As I already testified, the main
5 reason why the company filed Chapter 11 in my
6 understanding is the lack of cash.

7 Q. Was trying to obtain Second Thursday
8 one of the purposes, if not the main purpose,
9 of the bankruptcy filing?

10 A. As I testified earlier, it certainly
11 was not the main purposes. If it was one of
12 the purposes, perhaps Sandra DePriest would be
13 better asked that question to, but it is not my
14 understanding that that was the reason.

15 Q. I'm going to hand you a copy of the
16 objection that SkyTel filed to -- confirmation
17 of the amended plan, and direct you to Page 35
18 and specifically Footnote 170 of the objection.

19 I'm going to ask you a question
20 about that, but before I do, let me ask you
21 this: Were any of the debtor's creditors
22 threatening any action against the debtor on
23 overdue or in default loans before the
24 bankruptcy was filed?

25 A. I'm sorry? What was your question?

1 Q. Were any of the debtor's creditors
2 threatening any adverse action against the
3 debtor in connection with any overdue or
4 otherwise in default loans prior to the
5 bankruptcy filing?

6 A. Well, I didn't have direct contact
7 with the secured lenders in the sense of Chris
8 Dupree, Hane Hollis, those people. Sandra
9 DePriest or Don DePriest would better answer
10 that question, whether they were threatening
11 action against the company.

12 I was an unsecured creditor or am an
13 unsecured creditor, so at the time, I guess I
14 was a debtor of the company that hadn't been
15 paid. Tim Smith and Sharon -- I can speak for
16 the three of us, we were all very concerned
17 that we had worked and had not been paid and
18 you are not allowed to do that. Basically,
19 keep people working and not pay them, so I
20 wouldn't say threat would be the right word,
21 but certainly concern on our part prior to the
22 filing of Chapter 11 and a concern whether we
23 were ever going to get paid, and if not, how
24 much longer were we going to have to work
25 without getting paid or should we just go find

1 different jobs.

2 Q. To your knowledge, were any -- to
3 your knowledge as the corporate representative
4 of the debtor here today, were any of the
5 creditors threatening to take specific action
6 to try to collect or otherwise enforce loans
7 that may have been in default?

8 A. Loans?

9 Q. Any kind of debts of the --

10 A. As I just testified, I'm a creditor
11 and I was threatening to take action to get my
12 money.

13 Q. What actions were you threatening to
14 take?

15 A. Well, let's see. You can file with
16 the Virginia -- I guess it's the Virginia
17 Corporation Commission or there is some
18 employment of, you know -- I don't know if it's
19 the EEOC or -- there's a Department of Labor,
20 something like that in Virginia, and I
21 researched it, and also, I know Tim and Sharon
22 were very concerned also and so I wouldn't
23 characterize it as threats, but it was more
24 communication along the lines of we need to be
25 paid.

1 Q. To your knowledge, did any of the
2 debtor's creditors send default letters or
3 demand letters demanding that their in default
4 debts be paid?

5 A. Certainly, a number of tower
6 companies over the years have sent letters
7 saying, hey, you owe us money, utilities have
8 sent letters prior to the filing, so yes, there
9 were a number of creditors who expressed
10 concern or threatened litigation for
11 nonpayment.

12 Q. Did any of the -- were any of the
13 creditors pursuing any of the guarantees that
14 were provided by Donald DePriest in connection
15 with debts to the debtor?

16 A. I don't know.

17 Q. To the best of your knowledge, they
18 were not?

19 A. I didn't say that. I said I don't
20 know.

21 Q. You don't know if they were or they
22 weren't?

23 A. I don't know if they were or they
24 weren't.

25 Q. Do you have any idea or clue why any

1 of the creditors whose loans were guaranteed by
2 Mr. DePriest aren't going after Mr. DePriest on
3 the guarantees?

4 A. I don't know if they are or if they
5 are not, as I just testified.

6 Q. Do you know -- if they're not, do
7 you know why they wouldn't be?

8 A. I wouldn't want to speculate, no.

9 Q. You gave earlier as an example what
10 -- when I asked the question of what creditors
11 were threatening adverse actions on account of
12 overdue or in default loans, you gave an
13 example of -- I think yourself, Tim Smith and
14 one other person being concerned, and you
15 referenced some potential EEOC action.

16 Am I recalling that right?

17 A. Yes.

18 Q. Were there any other creditors
19 threatening any other adverse actions in
20 connection with in default loans other than
21 what you've already told me?

22 A. Well, I did not have a loan to the
23 company. In other words, my payroll was due so
24 that wasn't a loan. There were a number -- as
25 I testified, a number of creditors, utilities,

1 tower companies. Sharon Watkins, who runs the
2 accounts payable-accounts receivable department
3 would routinely receive phone calls,
4 threatening letters, dunning letters, those
5 sorts of things, from a number of people who
6 were listed on the -- mostly unsecured
7 creditors, so phone companies, utility
8 companies, all -- most of the folks you see
9 listed have sent letters -- termination
10 letters, threatening letters, collection
11 letters.

12 Q. Was that within six months to a year
13 before the bankruptcy was filed?

14 A. I'm sure. Certainly. Oh, yeah.

15 Q. What about any of the secured
16 creditors?

17 A. Any of the secured creditors? Let's
18 see. Was the question -- can you give me the
19 full question?

20 Q. Were any of the parties who were
21 secured creditors at the time the bankruptcy
22 was filed, had any of them threatened any
23 adverse action against the debtor due to the
24 loans that they had made to the company being
25 in default or otherwise?

1 A. As I testified earlier, I didn't
2 have direct interaction with the secured
3 lenders, so if they threatened or to the extent
4 they threatened, I wouldn't have received those
5 communications. Those would have gone directly
6 to Sandra and Don DePriest.

7 I don't know if they threatened
8 during any particular time frame or not.

9 Q. Page 35 of the objection, Footnote
10 170, contains a quote of a voice mail that you
11 left for a person named Chris with Denton
12 County or CoServ shortly after the bankruptcy
13 case was filed.

14 Can you read that and tell me if you
15 can confirm that that is an accurate
16 transcription of -- confirm if you remember
17 that communication and if it's accurate as I
18 set it forth there?

19 A. Do you want me to read the quote
20 with the included comments in there or just
21 read the quote? You know what I mean? Hey,
22 Chris --

23 Q. I'll tell you what. Yeah, read the
24 quote as quoted there and tell me if you recall
25 it. Tell me if you can confirm that that is an

1 accurate characterization of your message to
2 Chris of CoServ?

3 A. Okay. Just looking at the face of
4 it, I don't think it's accurate because it has
5 got a bunch of not true comments.

6 Q. I'm sorry, just disregard that part.
7 Sorry, if that's what you were asking about.
8 You must have misunderstood me. Thanks.

9 A. "Hey, Chris. It's John Reardon with
10 MCLM calling. Hey, I actually have some
11 interesting news to share with you. I think
12 it's good news but it doesn't sound like it.
13 We filed Chapter 11 yesterday in Northern
14 District of Mississippi in Federal Court, and
15 what that does is it stops the hearing at the
16 FCC from taking place and allows the bankruptcy
17 judge to essentially tell the FCC to approve
18 the transactions that are pending and then the
19 money would just go into an escrow account with
20 the bankruptcy court and they would pay out our
21 lenders. The benefit of that is innocent third
22 parties, such as CoServ, get their spectrum and
23 are not injured as a result of any wrongdoing
24 by our former owner, Sandra DePriest and her
25 husband. She and her husband just basically

1 walked away and filed Chapter 11 yesterday."

2 Q. Is that -- what you just read an
3 accurate characterization of the voice mail you
4 left for Chris?

5 A. Well, it looks to be. I remember
6 this came up at the bankruptcy court hearing.
7 I can't remember if it was the last one we had
8 or one before that, and it looks to be similar
9 to what was discussed at that hearing.

10 Q. When you said in there, "what this
11 does is it stops the hearing at the FCC from
12 taking place," what were you referring to
13 there?

14 A. Yeah, this message as it says was
15 left I guess the day after Chapter 11 was
16 filed. So this is my opinion at the time of
17 what that might mean for our customer and
18 basically CoServ, as you know, had entered into
19 an asset purchase agreement with the company
20 and had become a party to the hearing
21 designation order or the show cause hearing, so
22 this is my characterization of what the impact
23 of Chapter 11 might be upon them.

24 It allows the bankruptcy judge to
25 essentially tell the FCC to approve the

1 transactions that are pending and then the
2 money would just go into an escrow account.

3 Now, since that time, you know, I
4 have become more of an expert in bankruptcy law
5 than I was at this time, so I know that, you
6 know, things are not as cut and dry as this
7 voice mail seems to indicate.

8 Q. When you referenced -- when you said
9 "what that does is it stops the hearing at the
10 FCC from taking place," the hearing you are
11 referring to, was that the -- what I have been
12 calling the show cause hearing related to the
13 hearing designation order?

14 A. Yeah, that is probably what that
15 means when I say the hearing, because I think
16 that's the only hearing at the FCC that was
17 taking place at that time.

18 Q. It also says: "The benefit of that
19 is innocent third parties such as CoServ get
20 their spectrum and are not injured as a result
21 of any wrongdoing by our former owner Sandra
22 DePriest and her husband."

23 Do you see where it says that?

24 A. I do.

25 Q. Is that referring to the potential

1 Second Thursday relief that the debtor has now
2 sought -- has now said in its plan it intends
3 to seek?

4 A. No, not specifically. Remember, the
5 context of this is at the time, the company had
6 filed Chapter 11. I had no knowledge in
7 advance of the company filing Chapter 11. I
8 found out about it after the fact. And this is
9 my effort to essentially tell the customer what
10 I think the impact of that would be.

11 So I didn't -- if you would have
12 said to me on August 2nd what Second Thursday
13 is, I don't think I would have understand what
14 is it or what it means, but what I was told,
15 you know, is that essentially when you file
16 Chapter 11, innocent third party, like I say
17 here, such as CoServ, can get their spectrum
18 and not be injured as a result of the fact that
19 Sandra and Don have effectively given up their
20 equity or their membership interests or
21 whatever, and as I say here, walked away from
22 Chapter 11.

23 So, you know, there is a level of
24 sophistication in here which is lacking because
25 this is what I understood the situation to be

1 on August 2nd.

2 Q. What was the basis of your
3 understanding of the situation when this voice
4 mail was left?

5 A. As I recall when the company filed
6 Chapter 11, I was informed about it after the
7 fact, as I mentioned, and I contacted our FCC
8 counsel, Curt Brown, and I asked him, you know,
9 what does this all mean, because obviously, I
10 was -- as I testified earlier, I had not been
11 paid in about three months so I was concerned
12 about what it might mean for me, and I also had
13 a number of customers and I interacted
14 day-to-day -- in some cases, I signed these
15 agreements.

16 I think it has been testified to
17 before that I negotiated most of the terms of
18 these agreements, so I had a number of
19 customers whom I needed to contact and I wanted
20 them to hear about it from me, rather than hear
21 about it from third parties or Havens or
22 somebody else.

23 So, you know, this was basically my
24 effort to reach out to them, alert them to the
25 fact that Chapter 11 had been filed and had

1 tried to convey to them what that might mean to
2 them as parties to the hearing, but also as --
3 in some cases, as creditors because some of
4 these folks had paid deposits. Some of them
5 were leasing the channels and in the case of
6 CoServ, probably both.

7 Q. So the basis of your understanding
8 of what you said here, the benefit of that is
9 innocent third parties such as CoServ get their
10 spectrum and are not injured as the result of
11 any wrongdoing by the former owner and her
12 husband, the basis of that was conversation
13 with the debtor's FUC counsel; is that right?

14 A. That's what I recall. You know, it
15 has been maybe 14 months and a bit of a blur,
16 but I believe that is -- the first person I
17 talked to about it was Curt Brown and trying to
18 figure out what the impact of that would be.

19 Q. Now with your substantial knowledge
20 of bankruptcy and -- that you gained since that
21 time, do you understand that sentence to be
22 describing in essence what would happen if
23 Second Thursday relief is granted?

24 A. Well, again, I don't think that this
25 sentence actually, you know, contemplates

1 exactly what Second Thursday would be, but when
2 you ask the question -- are you talking about
3 the sentence that starts "and what that does?"
4 Q. I'm talking about the sentence of --
5 "the benefit of that is that innocent third
6 parties," the sentence that begins in that
7 manner.

8 A. Okay. The sentence that says: "The
9 benefit of that" -- I guess that means the
10 benefit of the Chapter 11, is innocent third
11 parties such as CoServ get their spectrum and
12 are not injured as a result of any wrongdoing
13 by our former owner Sandra DePriest and her
14 husband?

15 Q. Right. Sounds a lot like Second
16 Thursday to me. Now that you've come to
17 understand what is going on in the bankruptcy
18 case much better than I guess you did when you
19 left this voice mail, would you say that that
20 sentence -- the sentence that is based on your
21 conversation with Curt Brown is really
22 referring to, in essence, what would happen if
23 the debtor gets Second Thursday relief?

24 A. Well, as I understand Second
25 Thursday relief, innocent third parties such as

1 CoServ would theoretically at least get their
2 spectrum, but as I understand it, it is not
3 exactly the way I've described it here.

4 In other words, I believe that
5 Second Thursday focuses on innocent creditors
6 and, you know, CoServ -- I'm not sure if CoServ
7 filed to be a creditor or not. I know that
8 they have withdrawn their application, but it's
9 a little bit apples and oranges here, only
10 because -- as I describe it here in this voice
11 mail, I am talking about innocent third parties
12 like CoServ, but I think that Second Thursday
13 isn't focused on who would get the spectrum,
14 you know, after it's assigned to Choctaw or
15 Council Tree or somebody else.

16 It is more focused on who would get
17 the spectrum right away and would any of the,
18 quote-unquote, wrongdoers benefit. So to the
19 extent that that sentence categorizes CoServ as
20 innocent third party, yes, I don't know if
21 Second Thursday would really apply to them
22 directly.

23 Q. Under the plan filed by the debtor,
24 CoServ is not going to get their spectrum under
25 the debtors plan unless the debtor obtains

1 Second Thursday relief and/or Footnote 7
2 exception to the hearing designation order; is
3 that right?

4 MR. GENO: Object to the form of the
5 question.

6 That's not what the plan says.

7 THE WITNESS: As it relates to
8 Denton County, that neither one's going to
9 happen, I think, because they've filed to
10 withdraw, I think, or not prosecute the
11 purchase agreement.

12 BY MR. RUHL:

13 Q. Well, let's not relate it to Denton
14 County. Let's relate it to any of the other
15 asset purchase agreement parties.

16 A. I'm sorry --

17 MR. GENO: Denton County is CoServ.

18 THE WITNESS: Yeah. CoServ is --

19 BY MR. RUHL:

20 Q. I don't think you answered my
21 questions. What I'm saying is what you
22 described here -- let me back up.

23 Under the plan as proposed, the
24 parties to the asset purchase agreements that
25 have been approved by the bankruptcy court --

1 A. Yes.

2 Q. -- will not get their spectrum under
3 those asset purchase agreements unless the plan
4 proceeds, is confirmed, Second Thursday relief
5 is granted or possibly the FCC grants the
6 exception under Footnote 7 of the hearing
7 designation order. That's correct, isn't it?

8 A. No. I think the plan also
9 contemplates if Second Thursday is sought
10 for -- for example, Council Tree or Choctaw and
11 not approved by the FCC, then the licenses
12 would remain with the debtor and the debtor
13 would either seek to go down the route of
14 finding another buyer or perhaps pursue another
15 avenue like a Chapter 7 or something, so it is
16 not necessarily, as I understand the plan, an
17 either/or -- either Second Thursday or nothing
18 or either Footnote 7 or nothing.

19 It is -- Second Thursday might
20 happen, if it doesn't, the licenses would
21 remain with the debtor or they could be
22 revoked, I guess, and, you know, then a number
23 of different things could happen.

24 Q. So is it your testimony that this
25 voice mail doesn't indicate or at least suggest

1 that one of the reasons the bankruptcy case was
2 filed was for the purposes of attempting to get
3 Second Thursday relief?

4 A. One of the reasons it was filed was
5 to attempt to get Second Thursday? Well, I
6 think that is obviously what I would call a
7 result of a filing of the Chapter 11, but as I
8 testified earlier, the fact that the company
9 had no money really is what drove it to Chapter
10 11.

11 I didn't find out that we were going
12 to file Chapter 11 until after it was filed,
13 which really created a problem for me because
14 it would have been easier and better for me to
15 go to the customers and explain to them what
16 was about to happen or what had happened,
17 rather than a day after the fact trying to
18 contact them. When you have no money, you
19 don't have many choices.

20 Q. Is it your testimony that one of the
21 reasons -- not necessarily the main reason, but
22 at least one of the reasons the debtors filed
23 for Chapter 11 was to attempt to seek Second
24 Thursday relief at the FCC?

25 A. I think it's difficult to say. If

1 the company hypothetically had enough money to
2 continue to operate and to go through the
3 hearing process, it had already begun the
4 hearing process. Hypothetically, that might
5 have been an easier and quicker path, certainly
6 to get to Footnote 7 and/or to get to other --
7 so again, you know, the filing of the Chapter
8 11 and the impact of that in Second Thursday,
9 you know, to say that Second Thursday was a
10 reason for filing Chapter 11, I just don't
11 think that is accurate. Instead, it was the
12 fact that the company had no money. I was
13 threatening to leave, Tim was threatening to
14 leave, people were shutting off power. Tower
15 rents, office rents, cell phone bills.

16 There is only so long you can go
17 without paying people payroll and paying
18 utilities and it was at a critical point.

19 Q. When was the first time -- you said
20 you talked to Curt Brown before you left this
21 voice mail. When was the first time you
22 personally heard of the Second Thursday
23 Doctrine?

24 A. Second Thursday Doctrine?

25 Q. Yes.

1 A. I don't recall.

2 Q. Do you recall if it was before or
3 after this e-mail -- this voice mail?

4 A. I'm sorry, I don't remember.

5 Q. I'm going to play an audio file that
6 is this voice mail. It was produced in this
7 case by CoServ in part of discovery, and ask
8 you if you can confirm that this audio file is
9 you. It sure sounds like you.

10 (Tape played.)

11 MR. RUHL: For the record, I just
12 played an audio file that was produced by
13 CoServ or Denton County in this case that is
14 transcribed in Note 170 of SkyTel's objection
15 to the plan, which is Docket No. 804, except
16 for it doesn't include the bracketed
17 information that is included in Footnote 170.

18 BY MR. RUHL:

19 Q. Mr. Reardon, can you confirm that
20 that voice mail was you and the transcription
21 in Footnote 170 is accurate minus the bracketed
22 information?

23 A. Yes.

24 Q. Thank you. I appreciate that.

25 Does MCLM have any leases with site